

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

KHALAIRE ALLAH,

Plaintiff,

v.

**9:13-CV-826
(FJS/TWD)**

**B. HILTON, Deputy Superintendent Mental
Health, Marcy Correctional Facility; DR.
KHAN, Medical Director, Marcy Correctional
Facility; and DIANE L. VANBUREN,
Executive Assistant Commissioner, Department
of Corrections,**

Defendants.

APPEARANCES

OF COUNSEL

**KHALAIRE ALLAH
01-B-0997**

Marcy Correctional Facility
P.O. Box 3600
Marcy, New York 13403
Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**
The Capitol
Albany, New York 12224
Attorneys for Defendants

MELISSA A. LATINO, AAG

SCULLIN, Senior Judge

ORDER

Currently before the Court are Magistrate Judge Dancks' May 9, 2016 Order and Report-Recommendation, *see* Dkt. No. 65, and Defendants' objections thereto, *see* Dkt. No. 66.

Plaintiff commenced this civil rights action pursuant to 42 U.S.C. § 1983 against

Defendants. He alleged, among other things, that Defendants had violated his constitutional rights under the Eighth and Fourteenth Amendments to the United States Constitution.¹ *See generally* Dkt. No. 1.

On November 27, 2015, Defendants filed a motion for summary judgment, *see* Dkt. No. 54, which Plaintiff opposed, *see* Dkt. No. 60. In her May 9, 2016 Order and Report-Recommendation, Magistrate Judge Dancks recommended that this Court grant in part and deny in part Defendants' motion for summary judgment. Specifically, she recommend that this Court grant the motion with regard to Plaintiff's Eighth Amendment claims against Defendants Khan, Hilton and Van Buren and Plaintiff's Fourteenth Amendment due process claims related to imposition of restraints and the jumpsuit against Defendants Hilton and Van Buren and deny the motion with regard to Plaintiff's Fourteenth Amendment due process claims related to Draft Directive No. 4939 against Defendants Hilton and Van Buren. *See* Dkt. No. 65 at 37. Finally, Magistrate Judge Dancks recommended that this Court reject Defendants Hilton and Van Buren's qualified immunity argument at this time. *See id.* at 35.

Where a party makes specific objections to portions of a magistrate judge's report and recommendation, the court conducts a *de novo* review of those recommendations. *See Trombley v. O'Neill*, No. 8:11-CV-0569, 2011 WL 5881781, *2 (N.D.N.Y. Nov. 23, 2011) (citing Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1)(C)). "However, a district court will ordinarily refuse to consider evidentiary material that could have been, but was not, presented to the magistrate judge in the first instance." *Id.* (footnote omitted). After conducting the appropriate review, a district court may

¹ In her Order and Report-Recommendation, Magistrate Judge Dancks discussed the allegations that form the basis for Plaintiff's claims in detail. The Court will, therefore, not repeat those allegations herein.

decide to accept, reject, or modify those recommendations. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. Sept. 29, 2009) (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has conducted a *de novo* review of Magistrate Judge Dancks' Order and Report-Recommendation in light of Defendants' specific objections to her recommendations that the Court deny their motion for summary judgment with regard to Plaintiff's Fourteenth Amendment due process claims relating to Draft Directive No. 4939 against Defendants Hilton and Van Buren and that the Court reject their argument that they are entitled to qualified immunity with regard to those claims. Having completed its review, the Court hereby

ORDERS that Magistrate Judge Dancks' May 9, 2016 Order and Report-Recommendation, *see* Dkt. No. 65, is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Defendants' motion for summary judgment, *see* Dkt. No. 54, is **GRANTED** with regard to Plaintiff's Eighth Amendment claims against Defendants Khan, Hilton, and Van Buren; and the Court further

ORDERS that Defendants' motion for summary judgment, *see* Dkt. No. 54, is **GRANTED** with regard to Plaintiff's Fourteenth Amendment due process claims against Defendants Hilton and Van Buren insofar as those claims relate to imposition of restraints and the jumpsuit; and the Court further

ORDERS that Defendants' motion for summary judgment, *see* Dkt. No. 54, is **DENIED** with regard to Plaintiff's Fourteenth Amendment due process claims against Defendants Hilton and Van Buren insofar as those claims relate to Draft Directive No. 4939; and the Court further

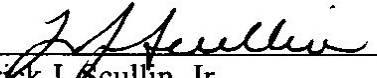
ORDERS that this case is now trial ready and the Court will issue a trial order in due

course;² and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: March 31, 2017
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Judge

² The Court encourages the parties to consent to proceed before Magistrate Judge Dancks for the trial of this matter due to the congestion of this Court's calendar. In the event the parties consent to proceed before Magistrate Judge Dancks, they can find the consent form on the Court's website, www.nynd.uscourts.gov under Forms/Civil/All Forms/AO-85 - Notice Consent and Reference of Civil Action to Magistrate. Both parties must sign this document before submitting it to the District Judge for approval. **The Clerk of the Court is directed to attach a blank consent form to this Order.**